IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 2537 of 2007()

AGAINST THE ORDER DATED / / IN CRLMP 2639/2007 IN CC.847/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER: ACCUSED

BABY THOMAS, PANAMTHOTTAM HOUSE,
KOTTUNGAL, CHAKAPPARA, PATHANAMTHITTA.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: COMPLAINANT & STATE

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1. T.T.PAUL, S/O THARAYIL THOMAS,
HOUSE NO.35/1355A, CHAKKUNGAL ROAD,
PALARIVATTOM, COCHIN-25.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No.2537 OF 2007

Dated this the 8th day of August, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instruments Act. Proceedings were initiated as early as in 2002. The case has at last reached the stage of defence evidence. The petitioner filed an application to send the cheque to the handwriting expert. That application was opposed by the complainant. The learned Magistrate, by the impugned order, a copy of which is produced as Annexure-C, dismissed the application holding that there is no bona fides and the attempt is only to drag on the proceedings.

2. Admittedly, the cheque is one issued in an account maintained by the petitioner with his bank. Admittedly, it bears the signature of the accused. Admittedly, the cheque is handed over by the accused to the complainant. Admittedly, it

was handed over with the intention that the cheque can be presented for encashment. What then is the contention? The learned counsel for the petitioner contends that the blank signed cheque was handed over the same to the complainant with the intention that he may hand over to someone else to avail a loan for himself. It was never intended or contemplated that the complainant would enter his own name as a payee. This, in short, is the crux of the contention.

3. It is also vitally relevant to note that the notice of demand did not admittedly evoke any response. It is in this background that at the defence stage the petition was filed to forward the cheque to the expert.

4. The law is trite that any and every request to forward the cheque to the expert need not be blindly and meekly accepted by the learned Magistrate. Sec.254(2) of the Cr.P.C. makes the position crystal clear. Only if the Magistrate thinks it fit, need the cheque be forwarded to the expert who is to be examined as a defence witness.

5. I shall carefully and scrupulously avoid any authentic finding on disputed facts at this stage. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. It is the

extraordinary inherent jurisdiction which this Court must invoke and exercise. Any and every error committed by a subordinate court even assuming that there is any such error will not by itself persuade this Court to invoke the extraordinary jurisdiction. Is there failure/ miscarriage of justice? Is there abuse of process of the court? These are the crucial questions that come up for consideration.

6. Without in any way intending to fetter the rights of the petitioner to raise appropriate contentions before the trial court or the appellate or revisional courts, I need only observe that I am not satisfied that there is any such vice or defect in the impugned order which would justify this Court invoking the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C.

7. This petition is accordingly dismissed. At the risk of repetition, it is made clear that the dismissal of this petition will not, in any way, fetter the rights of the petitioner to raise all appropriate contentions including a challenge against the impugned order at appropriate later stages.

Sd/-
(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge